

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 5:22-cr-00046

DONTE WEBSTER,

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW, the Defendant, Donte Webster, by and through counsel, L. Thompson Price, and files this sentencing memorandum for consideration by the Court, and states as follows:

On July 28, 2022, Donte Webster, appeared in person with counsel, before the Court for a guilty plea hearing. Mr. Webster pled guilty to Count 17 of the 19-count Indictment pursuant to a plea agreement. Count 17 charges Mr. Webster with a violation of 18 U.S.C. § 924(a)(1)(A), knowingly making false statements and representations with respect to the information required by the provisions of Chapter 44, Title 18, United States Code to be kept in the records of a Federal Firearms Licensee (FFL).

The Court's Probation Officer has calculated the Defendant's Sentencing Guideline range and determined the Guideline sentence for Mr. Webster, having been convicted of 18 U.S.C. § 924(a)(1)(A) in the Indictment, and taking into account the relevant conduct, provides a Total Offense Level of 20. In the determination of the Total Offense Level, the Probation Officer has also found that Mr. Webster has not clearly

demonstrated acceptance of responsibility for the offense pursuant to U.S.S.G. §3E1.1 and does not, therefore, receive a 2-point reduction and presumably an additional point reduction for acceptance of responsibility.

Objections To Calculation Of Total Offense Level And Motion For A Variance

The Defendant objects to a Total Offense Level of 20. Mr. Webster objects to the Probation Officer's finding that he did not accept responsibility and the resulting non-application of a three (3) point reduction pursuant to U.S.S.G. §3E1.1. Mr. Webster pled guilty in open court and signed a stipulation of facts admitting the offense conduct for which he is convicted. Mr. Webster entered his plea of guilty to Count 17 prior to the commencement of trial and has not denied any additional relevant conduct or falsely denied increases in the offense level, which amount to an increase of eight (8) points, for the Specific Offense Characteristics related to the number of firearms and the trafficking of the firearms pursuant to U.S.S.G. §2K2.1(b)(1)(A) and §2K2.1(b)(5). A three (3) point reduction for acceptance of responsibility would reduce the Total Offense Level to 17 and Mr. Webster respectfully requests that the Court impose a sentence that would be a variance from a guideline sentencing range established by a Total Offense Level of 20 if the Court were to adopt the Probation Officer's finding that the defendant has not accepted responsibility. Mr. Webster requests that this Court sentence him to a term of imprisonment at the bottom of, or below, the guideline imprisonment range of 24 months to 30 months.

3553(a) FACTORS

- i. 3553(a)(1): The nature and circumstances of the offense and the history and characteristics of the defendant*

On July 6, 2021, Mr. Webster entered Bridgeport Equipment and Tool, an FFL located at 156 Queen Anne Drive, in Beckley, West Virginia, to purchase three firearms which were: (One) Glock, Model 19 Gen 5, 9mm pistol, serial number BTPH039; (One) Glock 26 GEN 5, 9-mm pistol, serial number AFPH677; and (One) Taurus G2C, 9-mm pistol, serial number IC045517. To purchase the firearms, Mr. Webster executed ATF Form 4473, which certified he was the actual transferee and buyer of the aforementioned firearms. At that time, Mr. Webster knew that his representations on the form were false. Mr. Webster has admitted, in open court, all the elements of his offense of conviction, and accepted responsibility for that conduct. Mr. Webster has a criminal history score of zero.

ii. 3553(a)(2): The Need for the Sentence Imposed- (A) To reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense; (B) To afford Adequate Deterrence to Criminal Conduct, (C) To Protect the Public from Further Crimes of the Defendant; and (D) To provide Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner

Mr. Webster now faces a sentence of imprisonment within the guideline range of 33 months to 41 months, or a sentence of imprisonment to a guideline range of 24 months to 30 months, or less, if the Court accepts the defendant's objection to non-application of a three (3) point reduction pursuant to U.S.S.G. §3E1.1 and motion for a variance sentence. A sentence of imprisonment recognizing that Mr. Webster has accepted responsibility would satisfy the purposes of sentencing established by Congress in 18 U.S.C. §3553(a). Mr. Webster submits that such a sentence, followed by a term of supervised release, is sufficient to satisfy the purposes of sentencing. Mr. Webster has

been in federal custody since May 10, 2022, which combined with any further sentence imposed, will punish and deter Mr. Webster while also deterring others from similar conduct and protecting the public from further crimes.

iii. 3553(a)(3) and (4): The kinds of sentences available; and the kinds of sentence and the sentencing established

The maximum term of imprisonment is five years. 18 U.S.C. § 924(a)(1)(A). The Court may impose a term of supervised release of not more than three years. 18 U.S.C. § 3583(b)(2). Since the offense is a Class D Felony, the guideline range for a term of supervised release is one year to three years. U.S.S.G. §5D1.2(a)(2).

THE SENTENCING HEARING

Mr. Webster does not intend to call any witnesses at the sentencing hearing and anticipates the hearing will last approximately forty-five minutes.

Respectfully submitted this 27th day of October, 2022.

**Respectfully Submitted,
Donte Webster**

/s/ L. Thompson Price
Counsel for Defendant
L. Thompson Price, Esq.
WV State Bar ID #7011
209 West Washington Street
Charleston, WV 25302
(304) 741-7320

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CERTIFICATE OF SERVICE

Undersigned Counsel does hereby certify that the foregoing **DEFENDANT'S SENTENCING MEMORANDUM** has been electronically filed with the Clerk of Court this date, using the CM/ECF system and served upon opposing Counsel as follows:

Via CM/ECF:

Negar M. Kordestani
Assistant United States Attorney
Southern District of West Virginia
Robert C. Byrd U.S. Courthouse
300 Virginia Street East, Suite 4000
Charleston, West Virginia 25301

Date: October 27, 2022

/s/ L. Thompson Price
L. Thompson Price, Esq.,
WV State Bar ID #7011
209 West Washington Street
Charleston, WV 25302
(304) 741-7320